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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

JESSE ORLANDO BARELA, JR.,

Defendant and Appellant.

D073337

(Super. Ct. No. 352354)

APPEAL from a judgment of the Superior Court of San Diego County, Sim von Kalinowski, Judge. Affirmed.

Athena Shudde, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Alana Cohen Butler and Charles C. Ragland, Deputy Attorneys General, for Plaintiff and Respondent.

A jury found defendant Jesse Orlando Barela, Jr. guilty of two attempted murders (Pen. Code,<sup>1</sup> §§ 664/187, subd. (a), counts 1 & 2), corporal injury to a spouse (§ 273.5, subd. (a), count 3), and felony child abuse (§ 273a, subd. (a), count 4). The jury found true that each attempted murder was willful, deliberate, and premeditated (§ 189). As to each offense, the jury found true that Barela personally inflicted great bodily injury on the victim (§ 12022.7 subds. (a) & (e)) and personally used a deadly weapon, a knife, in committing the offense (§§ 1192.7, subd. (c)(23), 12022, subd. (b)(1)). As to count 3, the jury found true that Barela, within the previous seven years, had been convicted of violating section 243, subdivision (e), within the meaning of section 273.5, subdivision (f)(2). The court sentenced Barela to two consecutive life terms with the possibility of parole, consecutive to nine years in prison.

Barela now appeals, asserting, as a matter of law, that the evidence of willful, deliberate, and premeditated attempted murder was insufficient to sustain the jury findings. As we explain, we reject this assertion and affirm the judgment.

## FACTUAL BACKGROUND<sup>2</sup>

Barela and Jennifer were married in January 2013. At the time of their marriage, Jennifer had a 12-year-old daughter, Tatyanna P., from a prior relationship. Throughout the entirety of their marriage Barela suffered from bipolar disorder and posttraumatic

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<sup>1</sup> Statutory references are to the Penal Code unless otherwise stated.

<sup>2</sup> We view the evidence in the light most favorable to the judgment of conviction. (See *People v. Osband* (1996) 13 Cal.4th 622, 690.)

stress disorder (PTSD). He was controlling and abusive toward Jennifer, both verbally and physically.

In April 2013, Jennifer called the police after Barela physically abused and threatened her. Jennifer told the responding officer that Barela had been physically abusing her almost daily, that he threatened to kill her if she called the police, and that he regularly told her the only way she would leave him was if she was dead. Barela was arrested and convicted of domestic violence.

Barela and Jennifer stayed together, and Barela's controlling and abusive behavior continued. Jennifer described herself as a "prisoner" in her home because Barela would forbid Jennifer from leaving the apartment without him. He repeatedly threatened her, saying that he would "end" her, and that if she tried to leave him she would "be in the ground." In addition, Barela and Jennifer frequently argued about Tatyanna.

On November 7, 2015, Barela and Jennifer argued about Tatyanna, who was then 14 years old. That afternoon Barela sent Jennifer text messages about Tatyanna stating, "Yeah, well, I'm tired of her doing whatever she wishes and getting away with it. Not in my fucking house . . . ." That day Tatyanna had sneaked out to attend a football game. When she came home, Barela and Jennifer were arguing, and they continued arguing throughout the evening. Around 9:30 p.m., Barela began sending text messages to his mother complaining about Tatyanna's behavior and the way Jennifer disciplined her daughter. Around 9:45 p.m., Jennifer and Tatyanna were lying on the living room couch watching television. Barela yelled at them because he thought Jennifer should have more strictly punished Tatyanna for sneaking out, and that as part of the punishment Tatyanna

should not be allowed to watch television. Barela went to the kitchen and returned with a knife. He used the knife to cut the television cord so that no one could watch television. He grabbed the couch that Jennifer and Tatyanna were lying on and lifted it up, so they both "jumped" off the couch and went into Tatyanna's bedroom to disengage from the argument. Throughout the argument Barela continued sending text messages to his mother saying, "It all just got out of hand, Ma, all the damn time." His mother replied that he should "[t]ry to set some boundaries, baby." To which Barela responded at 10:01 p.m., "There are no boundaries, Ma. I'm done. I've lost all control."

Minutes after Jennifer and Tatyanna went to Tatyanna's bedroom, Barela came into the bedroom. He continued to yell about Jennifer's failure to properly discipline Tatyanna, telling her she was a horrible mother. Jennifer and Tatyanna yelled back at him, and he punched a hole in the wall outside of the bedroom and said, "[F]uck this." Barela grabbed an eight-inch knife from the kitchen, returned to Tatyanna's bedroom, and began stabbing Jennifer, aiming for her head. As he stabbed her Jennifer curled up in the corner of the bedroom and covered her head with her hands. Barela stabbed Jennifer in the head, the upper neck, cheek, left arm, and other areas of her body. Jennifer yelled for Tatyanna to run.

Tatyanna ran out of the apartment and Barela chased her with the knife. She ran a considerable distance around the apartment building to her grandparents' apartment,

which was located on the opposite side of the same apartment building.<sup>3</sup> Barela chased Tatyanna with the knife the entire way as she screamed for help. As she got closer to her grandparents' front door, she screamed for her grandmother and pounded on the front door. Barela caught up to Tatyanna and started stabbing her. When her grandparents opened the door, Tatyanna was on the ground and Barela was stabbing her in the back. Eventually, Tatyanna's grandmother and neighbors were able to pull Barela away from Tatyanna. He stabbed deep into her chest, causing her lung to collapse, as well as her cheek, back, and deep into her arm.

After a 911 call, the police and paramedics were dispatched to the apartment complex at approximately 10:04 p.m. Jennifer, who was bleeding profusely, had gone outside and was screaming for help. A neighbor, who was a registered nurse, tended to Jennifer until the paramedics arrived. Another neighbor, who was a Navy medic, tended to Tatyanna. Tatyanna was struggling to breathe and was bleeding heavily. While being restrained, Barela yelled at the Navy medic to stop providing aid to Tatyanna and to "get away" from her.

Both Jennifer and Tatyanna were transported to local hospitals. Jennifer's injuries required surgery. She was placed in the intensive care unit and remained in the hospital for four or five days. As a result of her injuries, Jennifer had lasting damage to her left hand, nerve damage to the left side of her face, as well as short-term memory loss. Tatyanna suffered potentially life-threatening injuries requiring surgery and was in the

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<sup>3</sup> When denying the Barela's section 1118.1 motion, the trial court described the distance as approximately 300 yards.

hospital for about a week. Taytanna did not return to school until about a month after the incident. Tatyanna had scars on her back, wrist, forearm, face, and head and her wrist continues to cause her pain.

## DISCUSSION

### A. *Standard of Review*

Barela asserts that there was insufficient evidence to support a conviction for willful, deliberate, and premeditated attempted murder. According to Barela, the evidence shows only that he acted on an unconsidered and rash impulse. We disagree, as there is substantial evidence to support a finding that Barela acted with premeditation and deliberation.

In reviewing the sufficiency of the evidence to support a jury's verdict finding a defendant guilty of a criminal offense, we apply the substantial evidence standard of review. (*People v. Johnson* (1980) 26 Cal.3d 557, 575–579; *Jackson v. Virginia* (1979) 443 U.S. 307, 318–319.) Under this standard, the court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. (*People v. Mendoza* (2011) 52 Cal.4th 1056, 1068–1069.) "Although a jury must acquit if it finds the evidence susceptible of a reasonable interpretation favoring innocence, it is the jury rather than the reviewing court that weighs the evidence, resolves conflicting inferences and determines whether the People have established guilt beyond a reasonable doubt." (*People v. Yeoman* (2003) 31 Cal.4th 93, 128.) " 'If the

circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment." ' ' (*People v. Jones* (2013) 57 Cal.4th 899, 961.)

#### B. *Sufficiency of the Evidence*

The crime of attempted murder requires proof of the specific intent to kill coupled with the commission of a direct but ineffectual act toward accomplishing the intended killing. (*People v. Smith* (2005) 37 Cal.4th 733, 739.) For purposes of sentence enhancement, a jury may find that an attempted murder was willful, deliberate, and premeditated. (Pen. Code, § 664, subd. (a).) "A verdict of deliberate and premeditated first degree murder requires more than a showing of intent to kill. [Citation.] 'Deliberation' refers to careful weighing of considerations in forming a course of action; 'premeditation' means thought over in advance. [Citations.]" (*People v. Koontz* (2002) 27 Cal.4th 1041, 1080 (*Koontz*).)

In *Anderson*, our Supreme Court identified three basic categories of evidence pertinent to the determination of premeditation and deliberation in the context of murder: (1) facts prior to the killing that may be characterized as planning activity; (2) facts about the defendant and victim's relationship that support a motive for the killing; and (3) facts about the manner of killing, which support an inference that it was done according to a preconceived design. (*People v. Anderson* (1968) 70 Cal.2d 15, 26–27.) The identified categories of evidence are those we " 'typically' find sufficient" to uphold first degree murder convictions. (*People v. Thomas* (1992) 2 Cal.4th 489, 517.) But our Supreme

Court has also observed that the *Anderson* factors are simply an "aid [for] reviewing courts in assessing whether the evidence is supportive of an inference that the killing was the result of preexisting reflection and weighing of considerations rather than mere unconsidered or rash impulse." (*People v. Perez* (1992) 2 Cal.4th 1117, 1125 (*Perez*); accord, *People v. Streeter* (2012) 54 Cal.4th 205, 242.)

Here, the record contains all three of the *Anderson* types of evidence to support a finding of premeditation and deliberation for both counts 1 and 2.

As to count 1, the jury could reasonably find Barela planned to kill Jennifer. Planning activity does not have to be extensive to support a finding of premeditation; it can occur in a short period of time. (*People v. Brady* (2010) 50 Cal.4th 547, 563–564.) Retrieving a weapon before a killing suggests planning. (*Perez, supra*, 2 Cal.4th at p. 1126 [obtaining a knife from the kitchen showed planning].) Here, Barela's actions support planning and premeditation. Barela followed Jennifer into the bedroom without a knife, but then left the bedroom in frustration and went to the kitchen to retrieve a large knife. Barela returned to the bedroom and used the knife to stab Jennifer repeatedly. Barela asserts his actions after picking up the knife are inconsistent with planning. He asserts the evidence shows he charged into the room, raised the knife, and started stabbing his wife, which is inconsistent with planning. We reject this assertion. Going to the kitchen to get a larger knife and taking it back to the bedroom definitively shows planning. (*Sanchez*, at pp. 34–35.) Barela's argument draws inferences from the evidence to support his contention this was a frenzied attack. While an expert testified that Barela suffered from both bipolar disorder and PTSD at the time of the assaults,



which could lead to his being impulsive and behaving irrationally, the jury did not draw the inferences he urges, and we may not do so on appeal.

The jury could also reasonably find that Barela had motive to kill Jennifer. A history of violence and threats of violence may constitute proof of a motive to commit the offense. (*People v. Kovacich* (2011) 201 Cal.App.4th 863, 893 ["evidence showing 'quarrels, antagonism or enmity between an accused and the victim of a violent offense is proof of motive to commit' " murder, citations omitted].) The evidence showed that Barela was a controlling and abusive husband throughout their entire marriage and that Barela made prior threats to kill Jennifer, saying he would "end [her]," "put a bullet in [her] head," and put her "in the ground." The evidence of violence and threats throughout their marriage is motive evidence suggestive of premeditation.

In *People v. Jackson* (1989) 49 Cal.3d 1170, the Supreme Court held that anger at the victim, even when irrational, supplies a motive to support a finding of premeditation and deliberation. (*Id.* at p. 1200 [unprovoked anger at police officer established motive].) On the day of the stabbing, Barela was frustrated that he could not convince Jennifer to more strictly discipline Tatyanna after she had sneaked out to attend a football game. Just three minutes before the 911 dispatch, Barela texted his mother that no boundaries were being set and he had "lost all control." The evidence of Barela's continued frustration on the day of the stabbing suggests an additional motive that supported the jury's inference he acted with premeditation in stabbing her.

Lastly, the jury could reasonably find that Barela was deliberate in his manner of attacking Jennifer. The location of her stab wounds supported the conclusion he was

targeting vital areas such as her head and neck, "intimating a preconceived design to kill." (*People v. Elliot* (2005) 37 Cal.4th 453, 471 [repeated knife wounds as method of killing suggesting premeditation]; *Koontz, supra*, 27 Cal.4th at p. 1082 [aiming at vital area at close range supports finding of premeditation and deliberation].)

As to count 2, the jury could have also reasonably found Barela planned to kill Tatyanna. In *People v. Memro* (1995) 11 Cal.4th 786, 863, our Supreme Court recognized a reasonable jury could conclude that during the time it took the defendant to run 178 feet between victims, the defendant considered his options. (*Ibid.*) Similarly, here, a reasonable jury could conclude Barela's actions were considered and premeditated when he chased Tatyanna with a knife for about 300 yards before stabbing her.

The jury could also reasonably find that Barela had motive to kill Tatyanna. Frustration over inability to control a child's behavior can be a preexisting motive indicating premediated murder. (See *People v. Jennings* (2010) 50 Cal.4th 616, 646 [evidence of a preexisting motive existed when defendant had history of using physical violence to discipline the child].) Here, the evidence showed Barela and Jennifer would frequently fight about the way Jennifer disciplined Tatyanna, and Barela's text messages that day show he was particularly angry and frustrated over Tatyanna's act of attending a football game without permission. Additionally, Barela's actions on the night of the stabbing, the cutting of the television cord, and the lifting of the couch, illustrate his frustration with Tatyanna's behavior. This evidence of frustration regarding Tatyanna's behavior established a motive that supported the inference he premeditated his attempt to kill her. (*Jennings*, at p. 646.)

Finally, the evidence shows Barela was deliberate in his manner of attacking Tatyanna. After chasing Tatyanna a considerable distance, Barela stabbed her and only stopped stabbing her when the knife was pulled loose from his hands and he was physically restrained. While restrained, he yelled at a Navy medic tending to Tatyanna, telling the medic to get away from her. (*Koontz, supra*, 27 Cal.4th at p. 1082 [preventing medical care showed deliberation].)

While the evidence may have supported a contrary finding, it is not our role to reweigh the evidence where the circumstances reasonably justify the trier of fact's findings. (*People v. Albillar* (2010) 51 Cal.4th 47, 60.) Based on the record before us, we conclude there was substantial evidence to support the jury's finding of willfulness, premeditation, and deliberation for both counts 1 and 2.

DISPOSITION

The judgment is affirmed.

BENKE, Acting P. J.

WE CONCUR:

HUFFMAN, J.

NARES, J.